

AMENDED IN ASSEMBLY AUGUST 22, 2014

AMENDED IN ASSEMBLY AUGUST 4, 2014

AMENDED IN ASSEMBLY JUNE 24, 2014

AMENDED IN ASSEMBLY JUNE 10, 2014

AMENDED IN SENATE MAY 27, 2014

AMENDED IN SENATE APRIL 22, 2014

SENATE BILL

No. 1249

Introduced by Senator Hill

February 20, 2014

An act to add Sections ~~25150.9, 25150.9.1, and 25150.9.2~~ 25150.82, 25150.84, and 25150.86 to, *and to repeal Section 25143.6 of*, the Health and Safety Code, relating to hazardous waste.

LEGISLATIVE COUNSEL'S DIGEST

SB 1249, as amended, Hill. Hazardous waste: shredder waste.

(1) The California Integrated Waste Management Act of 1989 requires materials that require special handling, as defined, to be removed from major appliances and vehicles in which they are contained before crushing for transport or transferring to a baler or shredder for recycling.

The hazardous waste control laws prohibit a person who is not a certified appliance recycler from removing materials that require special handling from major appliances and imposes specified requirements regarding transporting, delivering, or selling discarded major appliances to a scrap recycling facility. The Department of Toxic Substances Control is authorized to grant a variance from the requirements of the

hazardous waste control laws, under specified conditions and if the department makes one of specified findings. A violation of the hazardous waste control laws is a crime.

This bill would authorize, until January 1, ~~2017~~ 2018, the Department of Toxic Substances Control, in consultation with the Department of Resources Recycling and Recovery, the State Water Resources Control Board, and affected local air quality management districts, to adopt regulations establishing alternative management standards for metal shredding facilities for hazardous waste management activities within the jurisdiction of the Department of Toxic Substances Control, that would apply in lieu of the hazardous waste management standards if the department performs specified actions. The bill would include among those department actions preparing a preliminary analysis and a final analysis evaluating the hazardous waste management activities to which the alternative management standards would apply. The bill would require the department to provide notice that it proposes to adopt alternative management standards. The bill would prohibit the department from adopting alternative management standards that are less stringent than applicable standards under federal law.

The bill would require the disposal of treated metal shredder waste to be regulated pursuant to the hazardous waste control laws, unless the department adopts those alternative management ~~standards~~ *standards*, and would authorize treated metal shredder waste to be used *at a specified type of disposal unit* as alternative daily cover or for beneficial reuse or placed in ~~a that specified type of disposal unit~~, if the alternative management standards result in the treated metal shredder waste being classified as nonhazardous waste. The bill would require the department to complete the analysis of the hazardous waste management activities and the subsequent regulatory action before January 1, ~~2017~~ 2018, and would make all hazardous waste ~~determinations~~ *classifications* and policies, procedures, or guidance issued by the department before January 1, 2014, relating to metal shredder waste or treated metal shredder waste inoperative ~~once on January 1, 2018~~, if the department has completed that analysis and either rescinds the conditional nonhazardous waste classification of that waste or adopts alternative management standards pursuant to this bill. Because a violation of these requirements would be a crime, this bill would impose a state-mandated local program.

The bill would authorize the department to collect an annual fee from metal shredding facilities *and would require the department to establish*

and adopt regulations necessary to administer the fee and to establish a fee schedule at a rate sufficient to cover the costs of the department to implement these provisions. The bill would establish a separate subaccount in the Hazardous Waste Control Account, and would require that the fees be deposited into the subaccount, to be available upon appropriation by the Legislature. The bill would exempt a metal shredder facility which pays this annual fee from certain hazardous waste control law fees as those fees pertain to metal shredding activities and the generation, handling, management, transportation, and disposal of metal shredder waste.

(2) Existing law provides that, in general, regulations shall be adopted pursuant to the Administrative Procedures Act. Existing law requires emergency regulations be approved by the Office of Administrative Law and prohibits an emergency regulation from being in effect more than 180 days unless certain procedures are followed.

The bill would authorize a regulation adopted pursuant to the above-described fee provisions to be adopted as an emergency regulation, as specified. The bill would require that such an emergency regulation be filed with, but not be repealed by, the Office of Administrative Law, and would require that the regulation remain in effect for 2 years or until revised by the department, whichever occurs sooner.

(3) Existing law, on or before February 15, 1988, required specified regional water quality control boards to prepare a list of specified types of landfills that are authorized to accept and dispose of shredder waste.

This bill would repeal this provision.

~~(2)~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.*

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

1 (a) Before 1984, all metal shredder waste was considered not
2 to be hazardous waste and was disposed of or used as alternative
3 daily cover in municipal solid waste landfills.

4 (b) In 1984, due to the adoption of new state hazardous waste
5 regulations, metal shredder waste was classified as a non-RCRA
6 hazardous waste, or California hazardous waste, due to the presence
7 of lead, cadmium, copper, and zinc at levels above the state's
8 regulatory thresholds, as well as polychlorinated biphenyls in
9 concentrations that, on some occasions, exceeded either the federal
10 or the California regulatory thresholds, or both.

11 (c) Between 1986 and 1992, the Toxic Substances Control
12 Division of the *former* State Department of Health Services, which
13 was the predecessor to the Department of Toxic Substances Control
14 (DTSC), issued conditional nonhazardous waste classifications
15 pursuant to subdivision (f) of Section 66260.200 of Title 22 of the
16 California Code of Regulations, also referred to as "f letters," to
17 seven shredder facilities in California that treated their metal
18 shredder waste to stabilize the metals in the waste and reduce their
19 solubility. Once a facility operator received a nonhazardous waste
20 classification, treated metal shredder waste was no longer regulated
21 as a hazardous waste.

22 (d) In early 2001, DTSC began an initiative to evaluate the
23 adequacy of the metal shredder waste policy and compliance with
24 the conditional nonhazardous waste classifications, which included
25 new sampling and analysis. The draft report from that initiative
26 recommended rescinding the conditional nonhazardous waste
27 classifications.

28 (e) In 2008, DTSC sent letters to operators of metal shredder
29 facilities expressing the department's intention to repeal the
30 conditional authorization that allows metal shredder waste to be
31 classified as a nonhazardous waste. However, DTSC did not
32 rescind the conditional waste classifications.

33 (f) It is the intent of the Legislature that the conditional
34 nonhazardous waste classifications, as documented through the
35 historical "f letters," be revoked and that metal shredding facilities
36 be thoroughly evaluated and regulated to ensure adequate
37 protection of the human health and the environment.

38 *SEC. 2. Section 25143.6 of the Health and Safety Code is*
39 *repealed.*

~~25143.6. On or before February 15, 1988, the following California regional water quality control boards shall prepare a list of class III landfills, as specified in Section 2533 of Title 23 of the California Administrative Code, including at least one landfill in each specified water quality control region which is authorized to accept and dispose of shredder waste in accordance with State Water Resources Control Board Resolution No. 87-22: San Francisco Bay Region, Central Valley Region, Los Angeles Region, Santa Ana Region, and San Diego Region.~~

~~SEC. 2.~~

~~SEC. 3.~~ Section ~~25150.9~~ 25150.82 is added to the Health and Safety Code, to read:

~~25150.9.~~

25150.82. (a) The Legislature finds and declares that this section is intended to address the unique circumstances associated with the operation of metal shredding facilities, and the generation and management of wastes generated by metal shredding facilities. The Legislature further declares that this section does not set a precedent applicable to the management, including disposal, of other hazardous wastes.

(b) For purposes of this section, “metal shredding facility” means an operation that uses a shredding technique to process end-of-life vehicles, appliances, and other forms of scrap metal to facilitate the separation and sorting of ferrous metals, nonferrous metals, and other recyclable materials from nonrecyclable materials that are components of the end-of-life vehicles, appliances, and other forms of scrap metal. “Metal shredding facility” does not include a feeder yard, a metal crusher, or a metal baler, if that facility does not otherwise conduct metal shredding operations.

(c) The department, in consultation with the Department of Resources Recycling and Recovery, the State Water Resources Control Board, and affected local air quality management districts, may adopt regulations establishing management standards for metal shredding facilities for hazardous waste management activities within the department’s jurisdiction as an alternative to the requirements specified in this chapter and the regulations adopted pursuant to this chapter, if the department does all of the following:

(1) Prepares an analysis of the activities to which the alternative management standards will apply pursuant to subdivision (d). The

1 department shall first prepare the analysis as a preliminary analysis
2 and make it available to the public at the same time that the
3 department gives notice, pursuant to Section 11346.4 of the
4 Government Code, that it proposes to adopt the alternative
5 management standards. The department shall include in the notice
6 a statement that the department has prepared a preliminary analysis
7 and a statement concerning where a copy of the preliminary
8 analysis can be obtained. The information in the preliminary
9 analysis shall be updated and the department shall make the
10 analysis available to the public as a final analysis not less than 10
11 working days before the date that the regulation is adopted.

12 (2) Demonstrates at least one of the conclusions set forth in
13 paragraphs (1) to (4), inclusive, of subdivision (e).

14 (3) Imposes, as may be necessary, conditions and limitations
15 as part of the alternative management standards that ensure that
16 the hazardous waste management activity to which the alternative
17 management standards will apply will not pose a significant
18 potential hazard to human health or safety or to the environment.

19 (d) Before the department gives notice of a proposal to adopt
20 the alternative management standards pursuant to subdivision (c),
21 and before the department adopts the regulation, the department
22 shall ~~evaluate~~ *do all of the following*:

23 (1) *Evaluate* the operative environmental and public health
24 regulatory oversight of metal shredding facilities, identifying
25 activities that need to be addressed by the alternative management
26 standards, or other advisable regulatory or statutory ~~changes, and~~
27 ~~shall evaluate changes~~.

28 (2) *Evaluate* the hazardous waste management ~~activities and~~
29 ~~prepare, activities~~.

30 (3) *Prepare*, as required by paragraph (1) of subdivision (c), an
31 analysis that addresses all of the following aspects of the activity,
32 to the extent that the alternative management standards can affect
33 these aspects of the activity:

34 (1)

35 (A) The types of hazardous waste and the estimated amounts of
36 each hazardous waste that are managed as part of the activity and
37 the hazards to human health or safety or to the environment posed
38 by reasonably foreseeable mismanagement of those hazardous
39 wastes and their hazardous constituents. The estimate of the
40 amounts of each hazardous waste that are managed as part of the

1 activity shall be based upon information reasonably available to
2 the department.

3 ~~(2)~~

4 (B) The complexity of the activity, and the amount and
5 complexity of operator training, equipment installation and
6 maintenance, and monitoring that are required to ensure that the
7 activity is conducted in a manner that safely and effectively
8 manages each hazardous waste.

9 ~~(3)~~

10 (C) The chemical or physical hazards that are associated with
11 the activity and the degree to which those hazards are similar to,
12 or different from, the chemical or physical hazards that are
13 associated with the production processes that are carried out in the
14 facilities that produce the hazardous waste that is managed as part
15 of the activity.

16 ~~(4)~~

17 (D) The types of accidents that might reasonably be foreseen
18 to occur during the management of particular types of hazardous
19 waste streams as part of the activity, the likely consequences of
20 those accidents, and the reasonably available actual accident history
21 associated with the activity.

22 ~~(5)~~

23 (E) The types of locations where ~~the activity hazardous waste~~
24 *management activities associated with metal shredding and*
25 *management of treated metal shredder waste* may be carried out,
26 ~~an estimate of the number of these locations, out~~ and the types of
27 hazards *or risks* that may be posed by proximity to the land uses
28 described in Section 25227. The estimate of the number of
29 locations where the activity may be carried out shall be based upon
30 information reasonably available to the department.

31 (e) The department shall not give notice proposing the adoption
32 of, and the department shall not adopt, a regulation pursuant to
33 subdivision (c) unless it first demonstrates at least one of the
34 following, using the information developed in the analysis prepared
35 pursuant to subdivision (d) *and any other information available*
36 *to the department*:

37 (1) The requirements that the alternative management standards
38 replace are not significant or important in either of the following
39 situations:

1 (A) Preventing or mitigating potential hazards to human health
2 or safety or to the environment posed by the activity.

3 (B) Ensuring that the activity is conducted in compliance with
4 other applicable requirements of this chapter and the regulations
5 adopted pursuant to this chapter.

6 (2) A requirement is imposed and enforced by another public
7 agency that provides protection of human health and safety and
8 the environment that is as effective as, and equivalent to, the
9 protection provided by the requirement, or requirements, that the
10 alternative management standards replace.

11 (3) Conditions or limitations imposed as part of the alternative
12 management standards will provide protection of human health
13 and safety and the environment equivalent to the requirement, or
14 requirements, that the alternative management standards replace.

15 (4) Conditions or limitations imposed as part of the alternative
16 management standards accomplish the same regulatory purpose
17 as the requirement, or requirements, that the alternative
18 management standards replace, but at less cost or with greater
19 administrative convenience, and without increasing potential risks
20 to human health or safety or to the environment.

21 (f) The department shall not adopt alternative management
22 standards pursuant to this section if those standards are less
23 stringent than the standards that would otherwise apply under the
24 federal act.

25 (g) Nothing in the alternative management standards authorized
26 by this section is intended to duplicate or conflict with other laws,
27 rules, or regulations adopted by other state agencies or affected
28 local air quality management districts. The department shall, as
29 much as possible, align the alternative management standards with
30 the laws, rules, and regulations of other state agencies or affected
31 local air quality management districts.

32 (h) The owner or operator of a metal shredding facility, *or solid*
33 *waste disposal facility that has accepted treated metal shredder*
34 *waste, that* may be subject to the alternative management standards
35 shall provide to the department all information and data determined
36 by the department to be relevant to the evaluation and preparation
37 of the analysis required by ~~paragraphs (1) subparagraphs (A) to~~
38 ~~(5) (E), inclusive, of paragraph (3) of subdivision (d).~~

39 (i) The alternative management standards adopted by the
40 department pursuant to this section may, to the extent it is

1 consistent with the standards that would otherwise apply under
2 the federal act, allow for treated metal shredder waste to be
3 classified and managed as nonhazardous waste, provided that the
4 analysis prepared pursuant to subdivision (d) demonstrates that
5 classification and management as hazardous waste is not necessary
6 to prevent or mitigate potential hazards to human health or safety
7 or to the environment posed by the treated metal shredder waste.

8 (j) (1) The disposal of treated metal shredder waste shall be
9 regulated pursuant to this chapter and the regulations adopted
10 pursuant to this chapter, unless alternative management standards
11 are adopted by the department pursuant to this section.

12 (2) If the alternative management standards adopted by the
13 department pursuant to this section result in treated metal shredder
14 waste being classified as nonhazardous waste, the material may
15 be managed in either of the following manners:

16 (A) It may be used *at a unit described in subparagraph (B)* as
17 alternative daily cover or for beneficial reuse pursuant to Section
18 41781.3 of the Public Resources Code and the regulations adopted
19 to implement that section.

20 (B) It may be placed in a unit that meets the waste discharge
21 requirements issued pursuant to Division 7 (commencing with
22 Section 13000) of the Water Code that allow for discharges of
23 designated waste, as defined in Section 13173 of the Water Code,
24 or of treated metal shredder waste.

25 (3) This section does not limit the disposal or use of treated
26 metal shredder waste as alternative daily cover pursuant to Section
27 41781.3 of the Public Resources Code and the regulations adopted
28 to implement that section, or for other authorized beneficial uses
29 if that disposal or use is at a facility meeting the requirements of
30 subparagraph (B) of paragraph (2), is made under the authority of
31 the hazardous waste determinations governing metal shredder
32 waste issued by the department before January 1, 2014, and is
33 made before the department does either of the following:

34 (A) Rescinds, *in accordance with applicable law*, the conditional
35 nonhazardous waste classifications issued pursuant to subdivision
36 (f) of Section 66260.200 of Title 22 of the California Code of
37 Regulations with regard to treated metal shredder waste.

38 (B) Completes the adoption of alternative management standards
39 pursuant to this section.

(k) The department shall complete the analysis described in paragraph (1) of subdivision (c) and subsequent regulatory action before January 1, ~~2017~~ 2018. All hazardous waste ~~determinations~~ *classifications* and policies, procedures, or guidance issued by the department before January 1, 2014, governing or related to the generation, treatment, and management of metal shredder waste or treated metal shredder waste shall be inoperative and have no further effect ~~once on January 1, 2018, if~~ the department completes its analysis pursuant to subdivision (c) and takes one of the following actions:

(1) Rescinds the conditional nonhazardous waste classifications issued pursuant to subdivision (f) of Section 66260.200 of Title 22 of the California Code of Regulations with regard to that waste.

(2) Adopts alternative management standards pursuant to this section.

(l) The authority of the department to adopt original regulations pursuant to this section shall remain in effect only until January 1, ~~2017~~ 2018, unless a later enacted statute, which is enacted before January 1, ~~2017~~ 2018, deletes or extends that date. This subdivision does not invalidate any regulation adopted pursuant to this section before the expiration of the department's authority.

(m) A regulation adopted pursuant to this section on or before January 1, ~~2017~~ 2018, shall continue in force and effect after that date, until repealed or revised by the department.

~~SEC. 3.~~

~~SEC. 4.~~ Section ~~25150.9.1~~ 25150.84 is added to the Health and Safety Code, to read:

~~25150.9.1.~~

25150.84. (a) The department is authorized to collect an annual fee from all metal shredding facilities that are subject to the requirements of this chapter or to the alternative management standards adopted pursuant to Section ~~25150.9.1~~ 25150.82. The department shall establish and adopt ~~by regulation~~ *regulations necessary to administer this fee and to establish* a fee schedule that is set at a rate sufficient to reimburse the department's costs to implement this chapter as applicable to metal shredder facilities. The fee schedule established by the department may be updated periodically as necessary and shall provide for the assessment of no more than the reasonable *and necessary* costs of the department

1 to implement this chapter, *as applicable to metal shredder*
2 *facilities.*

3 (b) *The Controller shall establish a separate subaccount in the*
4 *Hazardous Waste Control Account. The fees collected pursuant*
5 *to this section shall be deposited into the subaccount and be*
6 *available for expenditure by the department upon appropriation*
7 *by the Legislature.*

8 (c) *A regulation adopted pursuant to this section may be adopted*
9 *as an emergency regulation in accordance with Chapter 3.5*
10 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
11 *2 of the Government Code, and for the purposes of that chapter,*
12 *including Section 11349.6 of the Government Code, the adoption*
13 *of these regulations is an emergency and shall be considered by*
14 *the Office of Administrative Law as necessary for the immediate*
15 *preservation of the public peace, health, safety, and general*
16 *welfare. Notwithstanding Chapter 3.5 (commencing with Section*
17 *11340) of Part 1 of Division 3 of Title 2 of the Government Code,*
18 *an emergency regulation adopted by the department pursuant to*
19 *this section shall be filed with, but not be repealed by, the Office*
20 *of Administrative Law and shall remain in effect for a period of*
21 *two years or until revised by the department, whichever occurs*
22 *sooner.*

23 (d) (1) *A metal shredding facility paying an annual fee in*
24 *accordance with this section shall be exempt from the following*
25 *fees as the fees pertain to metal shredding activities and the*
26 *generation, handling, management, transportation, and disposal*
27 *of metal shredder waste:*

28 (A) *A fee imposed pursuant to subdivision (a) or (d) of Section*
29 *25205.7.*

30 (B) *A disposal fee imposed pursuant to Section 25174.1.*

31 (C) *A facility fee imposed pursuant to Section 25205.2.*

32 (D) *A generator fee imposed pursuant to Section 25205.5.*

33 (E) *A transportable treatment unit fee imposed pursuant to*
34 *Section 25205.14.*

35 (2) *A metal shredding facility is not exempt from the fees listed*
36 *in paragraph (1) for any other hazardous waste the metal*
37 *shredding facility generates and handles.*

38 ~~SEC. 4.~~

39 ~~SEC. 5. Section 25150.9.2~~ 25150.86 *is added to the Health and*
40 *Safety Code, to read:*

1 ~~25150.9.2.~~

2 ~~25150.86.~~ Treated metal shredder waste that is managed in
3 accordance with the alternative management standards adopted
4 by the department pursuant to Section ~~25150.9~~ 25180.82 and that
5 is accepted by a solid waste landfill or other authorized location
6 for disposal or for use as alternative daily cover or other beneficial
7 use shall thereafter be deemed to be a solid waste for purposes of
8 this chapter and Section 40191 of the Public Resources Code.

9 ~~SEC. 5.~~

10 ~~SEC. 6.~~ No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.